

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

Proposing rule making related to five-year review of rules and providing an opportunity for public comment

The Inspections and Appeals Department hereby proposes to amend Chapter 1, “Administration,” Chapter 2, “Petitions for Rule Making,” Chapter 3, “Declaratory Orders,” Chapter 4, “Agency Procedure for Rule Making,” and Chapter 5, “Public Records and Fair Information Practices”; rescind Chapter 7, “Consent for the Sale of Goods and Services”; and amend Chapter 8, “Licensing Action for Nonpayment of Child Support and Prohibition of Licensing Action for Student Loan Default/Noncompliance With Agreement for Payment of Obligation,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 10A.104 and 22.11.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 10A.104, 17A.7(2) and 22.11.

Purpose and Summary

The Department completed a comprehensive review of Chapters 1 through 8 in accordance with Iowa Code section 17A.7(2). This proposed rule making updates descriptions of the Department’s administration and eliminates rules that are outdated and redundant, inconsistent, or incompatible with statute, the Department’s own rules, or the rules of other agencies.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on January 3, 2023. Comments should be directed to:

Ashleigh Hackel
Iowa Department of Inspections and Appeals
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: ashleigh.hackel@dia.iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend ~~481~~—**Chapter 1**, preamble, as follows:

MISSION STATEMENT

The department’s mission is to ~~assure state and federal program integrity by adjudicating, examining, and enforcing compliance to protect the health, safety and welfare of Iowans~~ achieve compliance through education, regulation, and due process for a safe and healthy Iowa.

ITEM 2. Amend subrule 1.1(1) as follows:

1.1(1) Overview of the department. The Iowa department of inspections and appeals ~~was is~~ established by Iowa Code sections ~~10A.101 to 10A.801~~ 10A.101 to 10A.802. The chief executive officer of the department is the director of the department of inspections and appeals, who shall be appointed by the governor to serve at the pleasure of the governor subject to confirmation by the senate no less frequently than every four years.

ITEM 3. Amend rule 481—1.2(10A) as follows:

481—1.2(10A) Definitions. ~~For rules of the department of inspections and appeals[481], the following definitions apply:~~ The definitions set forth in Iowa Code section 10A.101 are incorporated herein.

~~“Department” means the department of inspections and appeals.~~

~~“Director” means the director of the department.~~

ITEM 4. Amend rule 481—1.3(10A) as follows:

481—1.3(10A) Administration division. This division provides administrative support to the department, including fiscal, policy and planning, information technology, and public information. This division negotiates and provides oversight for compacts entered into between the state of Iowa and Indian tribes located in the state. The division also inspects and licenses the following ~~entities~~:

1. Social and charitable gambling pursuant to Iowa Code chapter 99B;
2. Food establishments, including but not limited to restaurants, vending ~~establishments~~ machines, and mobile food units, food processing plants, and home food processing plants;
3. ~~Hotels and home bakeries;~~
4. ~~Inspections for sanitation in any locality of the state upon written petition of five or more residents of the locality.~~

ITEM 5. Amend subrule 1.4(1) as follows:

1.4(1) Units of the division. The division is comprised of the following units.

~~a. Abuse coordinating unit. The abuse coordinating unit assists with the detection, investigation and prosecution of civil, administrative dependent adult abuse allegations in health care facilities.~~

~~b. a.~~ **Audit unit.** The audit unit audits health and human services health care facilities to review and verify facility resident billing and personal allowance accounts and to determine whether state billings

accurately reflect the health care facility census. The unit audits local department of human services offices to review and verify whether administrative expense claims and official receipts are in accordance with the criteria set forth in 2 CFR Part 200 and state law.

~~e. b. Economic fraud control bureau (EFCB). The economic fraud control bureau is comprised of two units.~~

~~(1) Program integrity/electronic benefit transfer (EBT) unit. This unit investigates recipient public assistance fraud and food assistance supplemental nutrition assistance program (SNAP) trafficking. Division staff investigate suspected fraud and assist the department of human services to determine eligibility for public assistance. Division staff may conduct investigations relative to the administration of any other state or federal benefit assistance program. Division staff may also conduct investigations relative to the internal affairs and operations of agencies and departments within the executive branch of state government, except for institutions governed by the state board of regents.~~

~~(2) Divestiture unit. This unit investigates the transfer or assignment of a legal or equitable interest in property from a Medicaid recipient transferor to a transferee for less than fair consideration. The department may establish a debt against the transferee, due and owing to the department of human services, in an amount equal to the medical assistance provided, but not in excess of the fair consideration value of the assets transferred.~~

~~d. c. Medicaid fraud control unit (MFCU). The Medicaid fraud control unit investigates allegations of fraud committed by providers against the Medicaid program as well as fraud in the administration of the Medicaid program. MFCU also investigates abuse, neglect or other crimes committed upon residents in care facilities or related programs that receive funding from the Medicaid program.~~

~~e. Professional standards unit. The professional standards unit investigates licensed professionals for the professional licensure division of the department of public health. Licensing boards may refer professional practice inquiries to the unit for investigation. This unit does not conduct investigations on behalf of the board of medicine, the board of pharmacy, the dental board, or the board of nursing.~~

~~f. d. Public assistance debt recovery unit (PADRU). The public assistance debt recovery unit investigates and initiates collections of overpayment debts owed to the department of human services.~~

ITEM 6. Amend subrule 1.6(1) as follows:

1.6(1) All hearings are governed by Iowa Code chapter 17A, other applicable statutes, including the transmitting agency's enabling statute and the statute authorizing the action taken, applicable agency rules, and the department's administrative rules found at 481—Chapter 10 ~~481—~~Chapters 9 to 11.

ITEM 7. Amend rule 481—1.8(10A) as follows:

481—1.8(10A) Employment appeal board. The employment appeal board consists of three members appointed by the governor, subject to confirmation by the senate, to staggered six-year terms. One member shall be qualified by experience and affiliation to represent employers, one member shall be qualified by experience and affiliation to represent employees, and one member shall represent the general public. This board hears and decides contested cases under Iowa Code chapters 8A, subchapter IV, 80, 88, 91C, 96, and 97B in accordance with administrative rules promulgated by the employment appeal board.

ITEM 8. Amend rule 481—1.11(10A,99D,99F) as follows:

481—1.11(10A,99D,99F) Racing and gaming commission. The Iowa racing and gaming commission regulates pari-mutuel dog and horse racing, simulcasting, gambling structures, and excursion gambling boats, racetrack enclosures, sports wagering, and fantasy sports contests in Iowa. The commission, whose five members are appointed by the governor, ~~seeks to preserve the integrity of~~ administers the laws and rules associated with these industries and to maintain confidence in the industries ~~by protecting the public and to ensure the integrity of licensed participants and operations for the state and the wagering public.~~ In performing its duties, the commission investigates the eligibility of applicants for licensure and selects those that can best serve the citizens of Iowa. The commission adopts standards for the

licensing of racing industry occupations, as well as standards for the operation of all race meetings and facilities. The commission also adopts standards for the operation and licensing of pari-mutuel and simulcast wagering, gambling structures, and excursion gambling boats, racetrack enclosures, sports wagering, and fantasy sports contests.

ITEM 9. Adopt the following new rule 481—1.12(10A,68B):

481—1.12(10A,68B) Consent for the sale of goods and services. An official or employee of the department shall not directly or indirectly sell or lease any goods, real estate, or services to individuals, associations, or corporations subject to the regulatory authority of the official's or employee's agency except as provided by Iowa Code section 68B.4 and rule 351—6.11(68B).

ITEM 10. Amend **481—Chapter 1**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 10A, 13B, 68B, 99D, 99F, and 237.

ITEM 11. Amend rule 481—2.1(17A) as follows:

481—2.1(17A) Petition for rule making. Any person or agency may file a petition for rule making with the agency at the Lucas State Office Building, Des Moines, Iowa 50319. A petition is deemed filed when it is received by that office. The agency must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS

Petition by (Name of Original Petitioner) for (the adoption, amendment, or repeal) of rules relating to (state subject matter).	}	PETITION FOR RULE MAKING
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The petition must provide the following information:

1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
2. A citation to any law deemed relevant to the agency's authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the proposed action which is the subject of the petition.
6. Any request by petitioner for a meeting provided for by rule 481—2.4(17A).

2.1(1) and 2.1(2) No change.

ITEM 12. Amend **481—Chapter 2**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section 17A.7 ~~as amended by 1998 Iowa Acts, chapter 1202, section 11.~~

ITEM 13. Amend **481—Chapter 3**, preamble, as follows:

The department of inspections and appeals adopts, with the following amendments, the declaratory orders segment of the Uniform Rules on Agency Procedure ~~printed in the first volume of the Iowa Administrative Code with the following amendments~~, which are published on the Iowa general assembly's website at www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf.

ITEM 14. Amend **481—Chapter 3**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 17A ~~as amended by 1998 Iowa Acts, chapter 1202, section 13.~~

ITEM 15. Amend 481—Chapter 4, preamble, as follows:

CHAPTER 4
AGENCY PROCEDURE FOR RULE MAKING
[481—Chapter 4 renumbered as 481—Chapter 10, effective 3/16/88.]

The department of inspections and appeals adopts, with the following amendments, the agency procedure for rule making segment of the Uniform Administrative Rules ~~printed in the first Volume of the Iowa Administrative Code with the following amendments~~, which are published on the Iowa general assembly's website at www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf.

ITEM 16. Amend subrule 4.5(5) as follows:

4.5(5) Accessibility. In lieu of the words “(designate office and telephone number)”, insert “the ~~administrative services bureau~~ department at (515)281-6407 (515)281-7102”.

ITEM 17. Rescind and reserve rule **481—4.10(17A)**.

ITEM 18. Amend **481—Chapter 4**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 17A ~~as amended by 1998 Iowa Acts, chapter 1202~~, and Iowa Code section 25B.6.

ITEM 19. Amend paragraph **5.9(2)“a”** as follows:

a. For a routine use as defined in rule 481—5.10(17A,22) or in the notice for a particular record system.

ITEM 20. Amend rule 481—5.11(17A,22) as follows:

481—5.11(17A,22) Consensual disclosure of confidential records.

5.11(1) Consent to disclosure by a subject individual. To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 481—5.7(17A,22).

5.11(2) No change.

5.11(3) Obtaining information from a third party. The department of inspections and appeals occasionally requests personally identifiable information from third parties during the course of its authorized audits, investigations, hearings or inspections. Requests to third parties for this information involve the release of confidential identifying information. ~~These requests and shall be made according to the following rules:~~ in accordance with the department's pertinent statutory authority.

~~481—21.3(10A) indicates when the department may review trust account records.~~

~~481—72.3(10A) describes investigation procedures including forms used by food stamp investigators.~~

~~481—73.6(10A) explains audit investigative procedures used in Medicaid provider audits or investigations.~~

~~481—74.3(10A) describes procedures used to investigate possible public assistance fraud.~~

5.11(4) Child support recovery unit. ~~Under the provision of Iowa Code Supplement section 252J.2(4), the department may share information~~ Information shared by or with the child support recovery unit of the department of human services ~~through manual or automated means for the sole purpose of identifying licensees or license applicants subject to enforcement under Iowa Code Supplement chapter pursuant to Iowa Code chapter 252J or 598~~ shall only be used as set forth in Iowa Code section 252J.2(4).

ITEM 21. Amend subrule 5.12(1), introductory paragraph, as follows:

5.12(1) A written request to review confidential records may be filed by the subject of the record as provided in rule 481—5.6(17A,22). The department need not release the following records to the subject:

ITEM 22. Amend subrule 5.13(1) as follows:

5.13(1) Confidential records. The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. to c. No change.

d. Minutes of closed meetings of a government body. (Iowa Code section ~~21.5(4)~~ 21.5(5))

e. and f. No change.

g. Confidential records are also described in the rules of each division as follows:

(1) ~~Inspection records—Chapters 50 to 69.~~

(2) ~~Investigation records—Chapters 70 to 74.~~

(3) ~~Audit records—Chapters 21 and 22.~~

(4) ~~Hearing records—Chapters 10 and 11.~~

h. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122(e) Rule of Civil Procedure 1.503(3), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

i. No change.

ITEM 23. Amend rule 481—5.14(17A,22) as follows:

481—5.14(17A,22) Authority to release confidential records. The department may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule ~~481—5.4~~(17A,22). If the department initially determines that it will release these records, the department may notify interested parties and withhold the records from inspection as provided in subrule 5.4(3).

ITEM 24. Amend rule 481—5.16(17A,22) as follows:

481—5.16(17A,22) Personally identifiable information. The department maintains systems of records which contain personally identifiable information.

5.16(1) Rule making. Rule-making records may contain information about people who make written or oral comments about proposed rules. Iowa Code section 17A.4 requires collection and retention of this information. ~~It cannot be retrieved by an individual identifier. It is not stored in a computer system.~~

~~During the rule-writing process, committees are occasionally used to gather basic information. Minutes of committee meetings are available for public inspection. The minutes are retained. Minutes of meetings are not retrievable by personal identifier. Minutes collected and stored in the health facilities division are available from the Health Facilities Division, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319, in compliance with Iowa Code section 135C.14.~~

5.16(2) ~~Appeals and fair~~ Administrative hearings division. Contested case records are maintained in ~~paper and computer~~ electronic files and contain names and identifying numbers of people involved. Evidence and documents submitted as a result of a hearing are contained in the contested case ~~records~~ file.

Records are collected by authority of Iowa Code ~~section 10A.202~~ chapter 10A. None of the information stored in a data processing system is compared with information in any other data processing system.

Records of hearings are recorded ~~on magnetic cassette tapes~~ digitally or in written transcripts.

5.16(3) Appellate defender. By authority of Iowa Code chapter 13B, the appellate defender maintains information and records relating to criminal and postconviction relief cases that are being appealed. Records contain names and identifying numbers of persons involved in these cases, and are maintained in paper and electronic files. Case information is not stored in a data processing system and cannot be compared with information in any data processing system. By authority of Iowa Code section ~~910A.13~~ 915.36, the appellate defender shall not disclose the names of child victims. Presentence investigation reports in the possession of the appellate defender are confidential records pursuant to Iowa Code section 901.4.

Litigation files or records contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. The records include briefs, depositions, docket sheets,

documents, correspondence, attorney's notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney, and case management records. The files contain material which is confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons wishing copies of pleadings and other documents filed in litigation should obtain them from the clerk of the appropriate court which maintains the official copy.

~~5.16(4)~~ *Audits division.* Paper files stored according to a person's or company's name are collected for purposes of auditing gaming, beer, wine, liquor, or real estate licenses. In each case the name of the licensee is part of the record. The list below shows Iowa Code authority for collection of information about those who hold:

Gaming licenses, 99B.2(2)

Beer permits, 123.138

Liquor control licenses, 123.33

Wine permits, 123.185

Real estate broker licenses, 543B.46

The audits division can also access computer records about real estate brokers or sales people by name. The data processing system is owned by the department of commerce. Historical information regarding licensure, audits, and disciplinary action is stored in this system.

All of these records are used to conduct audits according to Iowa Code section 10A.302.

~~5.16(5)~~ ~~5.16(4)~~ *Investigations division.* Paper and data processing files are stored and Files are stored electronically using encrypted cloud storage and state-administered servers. Electronic records are retrievable using a name, social security number, or state identification number, or other program identifier, as applicable. Computer records are also kept on microfiche. Personal computer floppy disks are used to monitor referral information and civil or small claims actions.

All records are collected and stored by the investigations division pursuant to Iowa Code section 10A.402. ~~All records are collected to decrease mispayments in human services programs or to help collect funds paid in error.~~

Comparisons between record systems are explained in rule 481—71.8(10A) 481—90.8(10A).

~~5.16(6)~~ ~~5.16(5)~~ *Inspections Health facilities division.* Records of the health facilities division are collected pursuant to Iowa Code sections 10A.702, 235E.2, and other entity- and program-specific authority. Records are maintained in paper and electronic files and may contain personally identifiable information. Records may be compared with information on data processing systems, including the direct care worker registry, and may be retrievable by personal identifier. A general list of records considered confidential is available in rule 481—50.8(10A).

~~a. By authority of Iowa Code chapters 232 and 217, child protective investigation records are collected in paper files and may contain names and social security numbers of people involved in child protective investigations. The division does not compare these records with information on a data processing system.~~

~~b. Names or social security numbers collected during license processing are stored in paper and computer files pursuant to Iowa Code section 10A.501(2).~~

~~c. The records in health facilities are not retrievable by personal identifier. A list of records considered confidential is available in rule 481—50.8(10A).~~

ITEM 25. Rescind and reserve ~~481—~~**Chapter 7.**

ITEM 26. Amend subrule 8.1(1) as follows:

8.1(1) The notice required by Iowa Code section 252J.8 shall be served upon the applicant or licensee by restricted certified mail, return receipt requested, or personal service in accordance with ~~R.C.P. 56.4~~ Iowa Rule of Civil Procedure 1.305. Alternatively, the applicant or licensee may accept service personally or through authorized counsel.